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12/23/2009

WESTERN DIGITAL TECHNOLOGIES, INC.

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EXAMINER

VAN HANDEL, MICHAEL P

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/982,652	<b>Applicant(s)</b> KRAPF ET AL.	
	<b>Examiner</b> MICHAEL VAN HANDEL	<b>Art Unit</b> 2424	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20,24,81 and 85-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20,24,81 and 85-92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Miscellaneous***

1. Please note that the examiner of record has changed.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/04/2009 has been entered.

### ***Response to Amendment***

3. This action is responsive to an Amendment filed 12/04/2009. Claims **1-20, 24, 81, 85-92** are pending. Claim **1** is amended. Claims **21-23, 25-80, 82-84** are canceled. Claims **85-92** are new.

### ***Response to Arguments***

4. Applicant's arguments regarding claim **1**, filed 12/04/2009, have been fully considered, but they are not persuasive.

Regarding claim **1**, the applicant argues that the 60/281,037 provisional application fails to disclose defining a viewer profile of the viewer of the display based on the viewer command,

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wherein the audiovisual system is responsive to the viewer command by initiating a corresponding action selected from the group consisting of: fast-forwarding the selected broadcast stream, pausing the selected broadcast stream, and replaying the selected broadcast stream. Applicant specifically argues that, because the viewer profile in the 60/281,037 application is simply a collection of viewer interactions of “fast forward play” for the sole purpose of indicating the viewer’s attention span for advertisements, the viewer profile is not based on a content of the displayed broadcast stream. The examiner respectfully disagrees. In addition to monitoring viewer interactions of “fast forward play,” the 60/281,037 application discloses updating the viewer profile based on content viewed and targeting advertisements based on that content. For instance, 60/281,037 discloses that the selection of advertisements is based on PVR behavioral targeting. It is observed which advertisements are being watched by the users and which are being skipped. Based on the previously watched advertisements, the next advertisements are selected for display. For example, if the user watched a SUV commercial, but skips the sedan car commercial, the user is next shown another SUV commercial thereby increasing the success of displayed advertisements. The advertisements are linked based on some predetermined parameters and organized as a structured tree. The links may be formed based on different parameters including statistically processing the user’s behavior (p. 17, Part D of 60/281,037).

The 60/281,037 application also discloses that, in generating the viewer profile, the viewer’s selections on the PVR are monitored, including monitoring of the time duration programming is watched, the volume at which the programming is listened to, and any available information regarding the type of programming, including category and sub-category of the

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programming. This extracted information is used in combination with the viewer selection data to form a viewer profile. The viewer profiles are subsequently used to match targeted advertisements to the viewers (p. 22, Part M of 60/281,037). The examiner interprets monitoring time duration a programming is watched to be a timestamp, as currently claimed. In addition, the 60/281,037 application discloses monitoring how often and when the viewer skips an advertisement and records the corresponding time periods. This is used in the viewer profile to determine viewer preferences for advertisement length (p. 21, Part K of 60/281,037). This also meets the limitation of defining a profile based in part on a “timestamp,” as currently claimed. Additionally, the 60/281,037 application discloses that the advertisements are stored ahead of the actual transmission of the television program where the product clips are to be inserted. Then, at the suitable time, one of the programming segments is chosen for display to the viewer where actual selection is made based on one or more viewer attributes (p. 19, Part F of 60/281,037). This also meets the limitation of a timestamp. As such, the examiner maintains that the 60/281,037 application meets the limitation of “defining a viewer profile of the viewer of the display based on a content of the displayed selected broadcast stream, the viewer command indicating a reaction by the viewer to the content of the displayed selected broadcast stream, and a timestamp,” as currently claimed.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims **1, 2, 4, 6-8, 10-19, 24, 81, 89-92** are rejected under 35 U.S.C. 102(e) as being anticipated by Plotnick et al. (of record).

Referring to claim **1**, Plotnick et al. discloses a method for displaying a targeted advertisement to a viewer of a display of an audiovisual system in conjunction with displaying a broadcast stream on the display, the method comprising:

- a. selecting a broadcast stream (broadcasted television program)(p. 3, paragraph 62 & p. 5, paragraph 71)(p. 18, 19, Part E of US 60/281,037);
- b. displaying the selected broadcast stream on the display (the user can time shift a broadcast stream with the PVR)(p. 3, paragraph 62 & p. 4, paragraph 63)(p. 18, 19, Part E of US 60/281,037);
- c. receiving a first signal from a viewer control interface indicating a viewer command to the audiovisual system (p. 7, paragraph 91; & p. 10, paragraph 109), wherein the audiovisual system is responsive to the viewer command by initiating a corresponding action selected from the group consisting of: fast-forwarding the displayed selected broadcast stream, pausing the displayed selected broadcast stream, and replaying the displayed selected broadcast stream (VCR-like controls of the PVR)(p. 3, paragraph 62 & p. 4, paragraph 63)(p. 16, Part C & p. 17, 18, Part D of US 60/281,037);
- d. defining a viewer profile of the viewer of the display based on a content of the displayed selected broadcast stream (the profile keeps track of shows watched)(p. 7,

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- paragraph 88 & p. 9, paragraph 105)(p. 22, Part M of 60/281,037), the viewer command indicating a reaction by the viewer to the content of the displayed selected broadcast stream (p. 10, paragraphs 109-111)(p. 22, Part M of 60/281,037), and a timestamp (p. 10, paragraph 109)(p. 19, Part F; p. 21, Part K; & 22, Part M of 60/281,037);
- e. selecting a first advertisement from a plurality of stored advertisements based on the viewer profile of the viewer of the display (p. 9, 10, paragraphs 105-107, 112)(p. 19, Part F & p. 22, Part M of 60/281,037); and
  - f. displaying the first advertisement on the display (p. 10, paragraph 112)(p. 19, Part F & p. 22, Part M of 60/281,037).

NOTE: The USPTO considers the applicant's "selected from the group consisting of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Referring to claim 2, Plotnick et al. discloses the method of claim 1, further comprising:

- g. updating the viewer profile based on a second signal received from the viewer control interface (p. 10, paragraph 110)(p. 22, Part M of 60/281,037);
- h. selecting a second advertisement from the plurality of stored advertisements based on the updated viewer profile (p. 9, 10, paragraphs 105-107, 112)(p. 22, Part M of 60/281,037); and
- i. displaying the second advertisement on the display (ads are displayed based on the user profile, and the user profile is updated based on ads displayed, content displayed, user interaction via VCR-like functions, etc.)(p. 10, paragraph 112)(p. 22, Part M of 60/281,037).

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Referring to claim 4, Plotnick et al. discloses the method of claim 2, wherein step (g) comprises:

- i. receiving a second signal from the viewer control interface indicating a viewer command to the audiovisual system, wherein the audiovisual system is responsive to the viewer command indicated by the second signal by initiating an action selected from the group consisting of: recording the first advertisement, specifying how the first advertisement is displayed on the display (short or alternative ad when ad is fast forwarded)(p. 11, 12, paragraphs 122, 123)(p. 16, Part C & p. 17, 18, Part D of 60/281,037), and replaying the first advertisement; and
- ii. updating the viewer profile based on the second signal received from the viewer control interface (p. 12, paragraph 123)(p. 22, Part M of 60/281,037).

NOTE: The USPTO considers the applicant's "selected from the group consisting of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Referring to claim 6, Plotnick et al. discloses the method of claim 2, wherein step (g) comprises:

- i. receiving a second signal from the viewer control interface indicating a viewer command to the audiovisual system, wherein the audiovisual system is responsive to the viewer command by initiating an action selected from the group consisting of: recording the selected broadcast stream, specifying how the selected broadcast stream is displayed on the display, and replaying the selected broadcast stream (essentially a repeat of the step of claim 1, again using VCR-like controls of the PVR)(p. 3,



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paragraph 62 & p. 4, paragraph 63)(p. 16, Part C & p. 17, 18, Part D of US 60/281,037); and

- ii. updating the viewer profile based on the second signal received from the viewer control interface (the profile keeps track of shows watched and the VCR-like commands)(p. 7, paragraph 88; p. 9, paragraph 105; & p. 10, paragraphs 109-111)(p. 22, Part M of 60/281,037).

NOTE: The USPTO considers the applicant's "selected from the group consisting of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Referring to claim 7, Plotnick et al. discloses the method of claim 2, wherein step (g) comprises:

- i. receiving a second signal from the viewer control interface indicating a viewer command to the audiovisual system, wherein the audiovisual system is responsive to the viewer command by initiating a program search (fast forward)(p. 3, paragraph 62 & p. 4, paragraph 63)(p. 15, Part C & p. 16, 17, Part D of 60/281,037); and
- ii. updating the viewer profile based on the second signal received from the viewer control interface (the profile keeps track of shows watched and the VCR-like commands)(p. 7, paragraph 88; p. 9, paragraph 105; & p. 10, paragraphs 109-111)(p. 22, Part M of 60/281,037).

Referring to claim 8, Plotnick et al. discloses the method of claim 2, wherein steps (h) - (i) are repeated until a third signal received from the viewer control interface indicates a positive viewer reaction or until a predetermined period of time has elapsed (p. 12, paragraph 124 & Fig. 12)(p. 18, Fig. 5B of 60/281,037).

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Referring to claim **10**, Plotnick et al. discloses the method of claim 1, wherein step (e) comprises:

- i. displaying an identification of at least one of the stored advertisements including the first advertisement on the display (p. 7, paragraph 85)(p. 23, Part N of 60/281,037); and
- ii. receiving a second signal from the viewer control interface selecting the first advertisement to be displayed on the display (p. 7, paragraph 85)(p. 23, Part N of 60/281,037).

Referring to claim **11**, Plotnick et al. discloses the method of claim 10, wherein step (e)(i) comprises displaying an identification of at least one of the stored advertisements including the first advertisement via a menu on the display (p. 7, paragraph 85)(p. 23, Part N of 60/281,037).

Referring to claim **12**, Plotnick et al. discloses the method of claim 10, wherein step (e)(i) comprises displaying an identification of at least one of the stored advertisements including the first advertisement via a banner on the display (p. 6, 7, paragraph 84)(p. 20, Parts G-I of 60/281,037).

Referring to claim **13**, Plotnick et al. discloses the method of claim 10, wherein step (e)(i) comprises displaying an identification of at least one of the stored advertisements including the first advertisement via an icon on the display (p. 6, 7, paragraph 84)(p. 20, Part G of 60/281,037).

Referring to claim **14**, Plotnick et al. discloses the method of claim 1, wherein step (f) comprises displaying the first advertisement on the display immediately prior to displaying a second broadcast stream on the display (can display ad during channel changes)(p. 6, paragraph 83)(p. 8, Table III of 60/281,037).

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Referring to claim **15**, Plotnick et al. discloses the method of claim 1, wherein step (f) comprises displaying the first advertisement on the display in a time slot adjacent to a time slot for displaying regularly scheduled advertisements within the broadcast stream (p. 12, paragraph 125)(p. 17, Part D of 60/281,037).

Referring to claim **16**, Plotnick et al. discloses the method of claim 1, wherein step (f) comprises displaying the first advertisement instead of displaying a regularly scheduled advertisement within the broadcast stream (p. 6, paragraph 83)(p. 18, Part E of 60/281,037).

Referring to claim **17**, Plotnick et al. discloses the method of claim 1, wherein the broadcast stream is a television broadcast stream (p. 9, paragraph 101)(p. 18, 19, Part E of 60/281,037).

Referring to claim **18**, Plotnick et al. discloses the method of claim 1, wherein the broadcast stream is a cable broadcast stream (Fig. 1)(p. 15, Figs. 3A, 3B of 60/281,037).

Referring to claim **19**, Plotnick et al. discloses the method of claim 1, wherein the broadcast stream is a satellite broadcast stream (Fig. 1)(p. 15, Figs. 3A, 3B of 60/281,037).

Referring to claim **24**, Plotnick et al. discloses the method of claim 1, further comprising storing the plurality of advertisements on a hard disk drive (p. 6, paragraph 80 & Fig. 1)(p. 15, Figs. 3A, 3B & p. 17, Part D of 60/281,037).

Referring to claim **81**, Plotnick et al. discloses the method of claim 4, wherein specifying how the first advertisement is displayed on the display comprises an action selected from the group consisting of: fast forwarding the first advertisement (p. 12, paragraph 123)(p. 16, Part C & p. 17, 18, Part D of 60/281,037), displaying the first advertisement without modification, and pausing the first advertisement.

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NOTE: The USPTO considers the applicant's "selected from the group consisting of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Referring to claim **89**, Plotnick et al. discloses the method of claim 1, wherein the displayed broadcast stream is a program (p. 9, paragraph 101)(p. 22, Part M of 60/281,037).

Referring to claim **90**, Plotnick et al. discloses the method of claim 1, wherein the displayed broadcast stream is an advertisement (p. 11, 12, paragraph 122)(p. 17, 18, Part D of 60/281,037).

Referring to claims **91** and **92**, Plotnick et al. discloses the method of claim 1, wherein the timestamp indicates a time of the viewer command within the displayed broadcast stream and wherein the timestamp indicates a time of day (p. 10, paragraph 109)(p. 19, Part F; p. 21, Part K; & p. 22, Part M of 60/281,037).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims **3, 9, 85-88** are rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick et al. in view of Knudson et al.

Referring to claims **3** and **9**, Plotnick et al. discloses the method of claims 2 and 1, respectively. Plotnick et al. further discloses updating the user profile (p. 10, paragraph 110)(p. 22, Part M of 60/281,037). Plotnick et al. does not specifically disclose transmitting the updated

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viewer profile to a head end. Knudson et al. discloses an interactive television program guide system in which targeted advertisements are presented to a user and a user's actions are monitored to target the advertisements (see Abstract). Knudson et al. further discloses that the set-top boxes transmit updating information about the user's interactions to the television distribution facility (p. 3, paragraph 51). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the monitoring system of Plotnick et al. to upload updated monitoring information to the distribution facility, such as that taught by Knudson et al. in order to help advertisers make their advertisements more effective (Knudson et al. p. 8, paragraph 91).

Referring to claims **85**, **86**, and **88**, Plotnick et al. discloses the method of claim 1, wherein step (e) comprises defining an individual profile based on a portion of the viewer profile and selecting the first advertisement based on the individual profile (based on a user's interaction with a previously shown ad)(p. 12, paragraph 125)(p. 22, Part M of 60/281,037). Plotnick et al. further discloses associating timestamps with user interaction events (p. 10, paragraph 109). Plotnick et al. does not specifically disclose that the individual profile also be based on a time of day that the first advertisement is to be displayed and displaying the first advertisement on the display at the time of day, where the time of day is an evening. Knudson et al. discloses an interactive television program guide system in which targeted advertisements are presented to a user and a user's actions are monitored to target the advertisements (see Abstract). Knudson et al. further discloses that the targeted advertisements have broadcast time tags that identify certain broadcast times that are associated with the subject matter of the advertisement. For example, advertisements for dinner foods might be associated with time slots in the evening (p. 7,

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paragraph 88). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the interaction-based advertisement targeting system of Plotnick et al. to include matching ads based on the time of day, such as that taught by Knudson et al. in order to help advertisers make their advertisements more effective (Knudson et al. p. 8, paragraph 91).

Referring to claim **87**, the combination of Plotnick et al. and Knudson et al. teaches the method of claim 85, wherein selecting the first advertisement in step (e) is further based on a content of a second broadcast stream being displayed at the time of day (Plotnick et al. Fig. 12)(p. 18, Fig. 5B of 60/281,037).

9. Claim **5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick et al. in view of Swix et al. (of record).

Referring to claim **5**, Plotnick et al. disclose the method of claim 2. Plotnick et al. does not specifically disclose that step (g) comprises receiving a second signal from the viewer control interface indicating a viewer command to the audiovisual system, wherein the audiovisual system is responsive to the viewer command by initiating a purchase of a good/service and updating the viewer profile based on the second signal received from the viewer control interface. Swix et al. discloses a system for providing targeted advertisements over a media delivery system (see Abstract). Swix et al. further discloses updating a viewer profile based on services a customer has purchased or used over the interactive television, such as video on demand (col. 7, l. 52-61). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the television monitoring system of Plotnick et al. to

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include monitoring user purchases made over the television system, such as that taught by Swix et al. in order to better assess a customer's tastes and deliver new, pertinent advertisements (Swix et al. col. 3, l. 19-22).

10. Claim **20** is rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick et al.

Referring to claim **20**, Plotnick et al. discloses the method of claim 1. Plotnick et al. does not specifically disclose that the broadcast stream is an Internet broadcast stream; however, the examiner takes Official Notice that it is notoriously well-known within the prior art to broadcast video content over the Internet. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the television monitoring system of Plotnick et al. to receive video over the Internet, such as that taught by the prior art in order to allow a subscriber to receive their video content at many locations over a commonly used distribution network.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL VAN HANDEL whose telephone number is (571)272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Van Handel/  
Examiner, Art Unit 2424

12/19/2009